



The Commonwealth of Massachusetts

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**DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY**

March 13, 2003

D.T.E. 03-24

Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 C.M.R. §§ 2.00 et seq., to promulgate regulations to establish a funding mechanism for wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, as 220 C.M.R. §§ 16.00 et seq.

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ORDER INSTITUTING RULEMAKING

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### I. INTRODUCTION

Acts of 2002, c. 239, provides for funding of certain telecommunications programs within the Commonwealth: Enhanced 911 service ("E-911"), relay services for TDD/TTY users<sup>1</sup> ("DPRS" or "TRS"), a communications equipment distribution program for people with certain disabilities ("adaptive equipment"), and amplified handsets at Massachusetts pay telephones. The Department of Telecommunications and Energy ("Department") must promulgate rules for such funding. This Order opens our rulemaking.

### II. BACKGROUND

In the early 1990's, Massachusetts established four programs designed to facilitate emergency communications and communications by persons with disabilities. E-911 service allows users of the public telephone system to reach a public safety answering point by dialing "911," and the answering point can automatically identify the user's telephone number and location. G.L. c. 166, § 14A; c. 6A, § 18A. DPRS relay service allows deaf, hard of hearing, and speech impaired persons to connect with persons of normal hearing and speech through the public telephone system by using TDD/TTY equipment and specially trained operators. G.L. c. 166, § 15E. The communications equipment distribution program provides people with hearing, speech, vision, or mobility impairments access to the telephone networks through specialized, customer-premises equipment. Id. Finally, providers of public and semi-public coin or coinless telephones are required to provide and maintain a certain percentage of their telephones with controls for sound amplification of incoming transmission. Id.

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<sup>1</sup> TDD/TTY equipment are telecommunication devices for the deaf consisting of terminals that permit two-way, typed telephone conversations with or between deaf people.

The legislation that established these programs provided for funding through directory assistance charges. Id., § 7; G.L. c. 159, § 19A. These programs are currently funded by charging residential subscribers for each Directory Assistance call that exceeds a subscriber's free ten-call allowance per month. Directory Assistance Charges, D.P.U. 91-68 (1991).

Initially, the revenues from directory assistance were sufficient to support the four programs described above. However, since 1995 the Fund has been operating at an annual deficit. As of the end of 2001, the deficit was \$28.6 million. Eleventh Annual Tracking Report, at 1 (July 2002). Verizon estimates that the Fund's deficit was \$40 million at the end of 2002. In addition, revenues from directory assistance have been decreasing. This decrease results, in part, from a proliferation of alternative directories, including Internet-based services, and from competition from other companies providing live directory assistance services. Id. at 3.

### III. DESCRIPTION OF THE LEGISLATION

Acts of 2002, c. 291, § 1, requires the Department to promulgate rules providing for the recovery by telecommunications companies of expenses that have been, or will be, incurred (a) by the statewide Emergency Telecommunications Board ("SETB"), and (b) by the four programs described above. In addition, the Department must determine the portion of directory assistance revenues that are to be used to offset the deficit incurred by telephone companies prior to the effective date of the Act, including any interest that should be applied. Id. The funding mechanism developed by the Department is to consist of a surcharge on each voice-grade local line of business and residential customers in Massachusetts. Id. To develop

the charge, all telephone companies are to submit to the Department historical data verifying their participation in the statutory funding mechanism. Id. The Department must make annual reports to the legislature concerning the financial condition of the fund and the reasonableness of the SETB's expenses administering the four communications programs. Id.

The Department must also develop a long term plan for funding E-911 services. Id., § 3. Among the issues the Department must consider in developing the long term plan are (1) equitable payment of the costs of the system by all of its beneficiaries, and (2) changes in technology comprising the E-911 system. Id. The Department must submit recommendations for a long term plan to the Committee on Government Regulations by December 31, 2006. Id.

IV. THE PROPOSED REGULATIONS

Pursuant to 220 C.M.R. § 2.00 et seq., the Department opens a rulemaking to create regulations defining how certain telecommunications programs, including wireline E911 and DPRS, will be funded. The Department proposes these new rules in new section 220 C.M.R. § 16.00. The proposed regulations are attached to this Order.

The proposed regulations establish a monthly surcharge on each residential and business voice line. The surcharge will appear as a separate line item on each customer's bill. The surcharge will pay for prudently-incurred costs associated with providing wireline E911 service, dual party TDD/TTY relay service, adaptive equipment distribution, and amplified handsets on pay telephones ("adaptive equipment services") from January 1, 2003 through December 31, 2007. The proposed regulations also allow the Department to use the surcharge to recover a portion of the deficit associated with the provision of these services under the

previous statutory funding mechanism.<sup>2</sup> The proposed regulations require that telecommunications companies collect the surcharge from their customers through a line-item charge on customer bills and send the money to the SETB to be placed in a fund to pay for provision of these services. The fund and any interest generated by the fund will be used only to pay for the covered services identified above. The surcharge will be initially established for a five-year period, ending December 31, 2007.

The proposed regulations require the Department to fix the amount of the surcharge to be applied to each voice line. The Department will base this determination on estimated program costs from the SETB, and information provided by the telecommunications companies, and will include funds to pay for prudent capital improvements to the E911 system. The Department will not set the surcharge amount in these rules but, for administrative flexibility in responding to changes in costs and revenues, will establish the surcharge through a Department Order.

The proposed regulations detail the type of information to be provided to the Department by the SETB and the telecommunications companies, including five-year projections of costs and line count data. The proposed regulations also detail how lines are to be counted. At the request of the SETB or a telecommunications company, the Department may adjust the level of the surcharge on an annual basis.

The proposed regulations provide that the surcharge will pay for the expenses of the covered programs incurred since January 1, 2003, at which time the previous funding

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<sup>2</sup> G. L. c. 166, §15E (St. 1990, c. 291, § 7).

mechanism ceased funding current program costs. However, the surcharge will not be established until final regulations are promulgated and the Department makes a determination of the level of the surcharge. The proposed regulations provide that the Department may establish an interim surcharge to allow for collection of funds to operate the programs identified in the regulations. The interim surcharge will be based on estimated reasonable and customary program costs and on estimated line count data. The Department will review the level of the interim surcharge and adjust the level of the surcharge once actual cost and line count data become available.

The proposed regulations require the SETB to establish and administer the fund. Telecommunications companies must submit the surcharge funds collected to the SETB within 30 days from the end of the month of collection. The proposed regulations also allow telecommunications companies to charge an administrative fee of one percent of the surcharge amount collected by that telecommunications company. The proposed regulations also define how telecommunications companies that provide the covered programs may collect reimbursement for program expenses. Telecommunications companies must submit invoices to the SETB, and the SETB will reimburse prudently incurred costs. Disputes regarding payments to telecommunications companies may be brought to the Department for resolution after reasonable but unsuccessful attempts to resolve payment have been made by the telecommunications company and the SETB. The SETB will track monthly expenses and revenues collected from telecommunications companies.

The proposed regulations also establish financial reporting requirements. By August 1

of each year, each telecommunications company will provide to the Department and the SETB a report of surcharge amounts collected and remitted to the SETB. By August 31 of each year, the SETB will provide to the Department a report on the expenses incurred and surcharge revenue generated for the year. When the SETB submits its annual report, it shall update its cost projections for the next five years. By August 1 of each year, each telecommunications company will provide to the Department a report on the status of the deficit existing prior to the surcharge funding mechanism. The Department will make an annual report on the fund to the General Court.

The proposed regulations apply to expenses for the provision of the covered programs from January 1, 2003, to December 31, 2007. By June 30, 2007, the SETB and telecommunications companies will provide to the Department a report of current lines served and an estimate of the projected costs for the next five-year period.

#### V. SOLICITATION OF COMMENTS

The Department seeks comments on these proposed rules 220 C.M.R. § 16.00. The Department requests written comments, the paper copy of which should be filed with Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, Boston, MA 02110. The Department also seeks electronic copies of written comments by an email attachment to [dte.efiling@state.ma.us](mailto:dte.efiling@state.ma.us) (copy to [Joan.Evans@state.ma.us](mailto:Joan.Evans@state.ma.us)). Comments filed in accordance with 220 C.M.R. § 2.00 et seq. must be received by the Department no later than 5:00 p.m. on Tuesday, April 22, 2003. Reply comments must be received by Friday, May 9, 2003.

To provide further opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, and 220 C.M.R. § 2.05, the Department will hold a public hearing on Wednesday, April 30, 2003, at 10:00 a.m., at its offices at One South Station, 2<sup>nd</sup> Floor, Boston, Massachusetts. Interested persons may present facts, opinions, or arguments related to the proposed regulations at the public hearing.

By Order of the Department,

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner